

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

MONTERIO TYRONE PINCKNEY,

Petitioner,

No. CIV S-05-144 FCD CHS P

vs.

A.K. SCRIBNER, Warden,

Respondent.

ORDER

Petitioner, a state prisoner proceeding through counsel, filed a timely notice of appeal of this court's May 20, 2009 order denying his application for writ of habeas corpus. Before petitioner can appeal this decision, a certificate of appealability must issue. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

A certificate of appealability may issue under 28 U.S.C. § 2253 "if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate of appealability must "indicate which specific issue or issues satisfy" the requirement. 28 U.S.C. § 2253(c)(3).

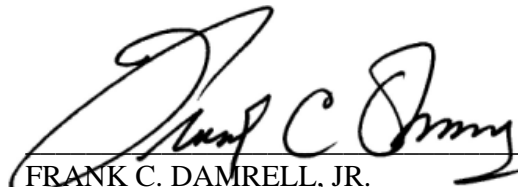
A certificate of appealability should be granted for any issue that petitioner can demonstrate is "debatable among jurists of reason," could be resolved differently by a different court, or is "adequate to deserve encouragement to proceed further." *Jennings v. Woodford*,

290 F.3d 1006, 1010 (9th Cir. 2002) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)).<sup>1</sup>

In this case, the court finds that petitioner has demonstrated that the following issues could potentially be resolved differently by a different court: (1) an instructional error violated petitioner's due process rights; (2) his involuntary confession was improperly admitted as impeachment evidence; and (3) he received ineffective assistance of counsel on direct appeal.

Accordingly, IT IS HEREBY ORDERED that a certificate of appealability shall issue in the present action.

DATED: October 21, 2009.

  
FRANK C. DAMRELL, JR.  
UNITED STATES DISTRICT JUDGE

---

<sup>1</sup> Except for the requirement that appealable issues be specifically identified, the standard for issuance of a certificate of appealability is the same as the standard that applied to issuance of a certificate of probable cause. *Jennings*, at 1010.